

3. Should The FCC Find That VON Services Are Enhanced Services, The Public Interest Dictates That The Commission Revisit Its Outdated Enhanced Services Exemption In This Instance

Even if the Commission incorrectly finds that VON services meet the definition of an enhanced service, the public interest dictates that users of VON services pay their fair share of interstate access charges, universal service contribution, and international accounting settlements.

Perhaps the best way to look at the VON service issue is to imagine what is most likely to happen if the Commission does nothing and allows users to continue utilizing the Internet to make unlimited long distance and international telephone calls without paying any of the fees normally paid by long distance service providers. Obviously VON services will become more and more popular as AT&T, Microsoft, Intel, and other major companies begin to provide those services to tens of millions of consumers in the coming months. These same consumers will then migrate off the fee-based public switched telephone network in order to use the free VON service. This migration will lead to a significant overcrowding of the Internet, with more frequent and serious network delays and stoppages. Other users of the Internet would suffer as the network is increasingly devoted to voice traffic, rather than data or video traffic.

In addition, local exchange companies would witness a greater inability to handle each and every Internet call that hits their central offices. This is because, with free calling and low, flat-rated access fees, Internet users will have no incentive to terminate their transmissions when they are completed. More and more users will remain "logged in" around the clock. The local exchange network was never sized for such massive, constant new usage. It would be only a matter of time before persistent and frequent network outages would hinder usage of the local

network for all users.

On the long distance service end, as more voice traffic migrates from the PSTN to the Internet, fewer and fewer users of the long distance network will remain to pay interstate access charges and universal service obligations. The LECs will not be adequately compensated for long distance usage of their infrastructure. Moreover, universal service will suffer because less financial support will be available for low-income consumers, and for residents of rural and high-cost areas across the country. Local telephone companies, already burdened by the heavy load of Internet usage, will be harder pressed to continue providing universal services.

Finally, international Internet telephony also avoids the fees that foreign carriers and U.S. carriers charge each other to help pay the cost of utilizing the underlying network infrastructure to originate and terminate voice traffic. Without these fees, both U.S. and foreign telephone companies will be less capable of upgrading and modernizing their networks. Again, all users will be affected adversely.

Thus, VON services should be required to pay their fair share. Otherwise, traditional long distance users may migrate en masse to these artificially priced VON services, thereby bypassing the access charge system altogether and seriously threatening the future of universal service. To prevent this uneconomic bypass of the public switched network, the Commission must require VON services to cover all pertinent interstate access charges, universal service funding, and international settlements.

IV. THE COMMISSION MUST ACT NOW TO PREVENT LONG-TERM DAMAGE TO ACCESS CHARGE PRICING, UNIVERSAL SERVICE, AND INTERNATIONAL RELATIONS

The Commission cannot afford to simply brush aside the ACTA Petition and ignore the obvious: VON services are fast becoming a serious threat to the entire access charge regime and to universal service. In fact, Netscape's Chairman recently challenged the very legality of the entire cost structure underlying the telecommunications industry. He stated that "voice tariffs are just not acceptable. If you can bypass the tariffs and it works, then there must be something wrong with the tariffs." To the contrary, LDDS WorldCom believes that ability of VON services to evade lawful industry charges is "just not acceptable," and all available evidence points to "something wrong" with not requiring VON services to pay their fair share of their costs.

Should the Commission decide not to exercise its rightful jurisdiction over VON services, Congress may decide to weigh in on the matter. Although the Internet has been an unregulated domain since its inception, it must be noted that Congress declined to include a provision in the new Telecommunications Act of 1996 that would have expressly prohibited the FCC from asserting jurisdiction.⁴⁵ Very recently, key Congressional staff indicated their willingness to reexamine the regulatory status of all information services, primarily because of the new problem of VON services. A senior policy analyst for Rep. Edward Markey (D-MA) has indicated that when the ESP exemption from interstate access charges was established in the 1980s, "it was not contemplated that these companies would be offering the same services that

⁴⁵ "ACTA Petition May Implicate Issues of Universal Service, FCC Official Says," BNA Electronic Information Policy and Law Report, April 19, 1996, at 35.

long distance companies were offering."⁴⁶ Markey's aide went on to remark that Congress is now paying attention "to the extent that these companies are using the Internet to bypass access charges. That starts to threaten a lot of what those access charges are intended to do, which is to deal with universal service concerns and other things."⁴⁷ Counsel for the House Telecommunications Subcommittee added that "if the Internet evolves into a voice-over system, as now seems to be the case, then clearly this is something that we're going to have to look at in terms of common carrier regulation."⁴⁸

Once more, LDDS WorldCom cannot stress strongly enough that it does not seek the imposition of common carrier-type regulation on any information or Internet-based services, including VON services. It is not in anyone's interest to begin regulating the Internet as if it were just another AT&T, or a Bell Company. All LDDS WorldCom seeks is equitable and nondiscriminatory cost treatment of all "like" telecommunications services.⁴⁹ To the extent that VON services are the same as traditional long distance telephone services, the Commission should require VON services to pay the same charges and fees that IXCs must pay. The "free ride" now experienced by users of VON services is not fair because it ultimately comes at the expense of other users of the public switched network.

The Commission has already signalled that it recognizes the fundamental fact that, to the extent that providers and users interconnect with telecommunications networks in the same

⁴⁶ "Bill May Emerge Next Year Making On-Line Services Common Carriage," Washington Telecom Week, May 3, 1996, at 10.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ 47 U.S.C. § 202(a).

fashion, the same interconnection charges should apply. In its Notice of Proposed Rulemaking in the CMRS interconnection proceeding, for example, the Commission noted that "[i]nterstate access is essentially another form of interconnection between networks, that between LECs and IXC," and that, "as a matter of long-term policy, there may be important reasons why the regulatory regime for interstate access charges should not vary dramatically from the rules relating to LEC-CMRS interconnection, to the extent that LEC-CMRS and LEC-IXC interconnections use similar features and functions."⁵⁰ Similarly, in its Notice of Proposed Rulemaking in CC Docket No. 96-98, the Commission observes that, because there are "clear similarities" between interconnection to the LECs' local networks and the interstate access charge regime:

Radically different pricing rules for interconnection and unbundled elements, on the one hand, and levels of interstate access charges, on the other, may create economic inefficiencies and other anomalies. Indeed, under a long-term competitive paradigm, it is not clear that there can be a sustainable distinction between access for the provision of local service and access for the provision of long distance service. Thus, we are cognizant of the need to consider these issues in a coordinated manner, and believe it is critically important to reform our interstate access charge rules in the near future.⁵¹

This same lesson should apply to VON services (and, indeed, to the entire category of enhanced service providers generally). Radically different pricing rules for traditional long distance services and for VON services will only lead to "economic inefficiencies and other anomalies,"

⁵⁰ Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 95-185, 94-54, Notice of Proposed Rulemaking, FCC 95-505, issued January 11, 1996, at para. 17.

⁵¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, issued April 19, 1996, at para. 146.

including non-cost-based arbitrage and bypass of the public switched telephone network.

Finally, it bears noting that at least one major provider of Internet-based telephony recognizes that users of VON services eventually must pay at least their fair share of universal service support. In its comments in the Commission's universal service proceeding, Netscape Communications admitted that:

as voice, video, fax and data communications are all increasingly carried over both telecommunications and information service networks, in the long run [the current universal service model] will need to give way to a broader, more flexible system, in which all communications providers -- regardless of regulatory classification -- both contribute to and receive support from a "universal" universal service support system.⁵²

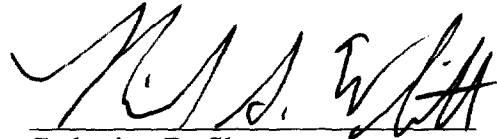
Although LDDS WorldCom agrees with much of Netscape's assessment, it is apparent that the "long run" has already arrived. Certainly requiring VON services to cover all applicable telephony charges will not get any easier to accomplish politically down the road, as reliance on the lopsided regulatory status quo increases, and unrealistic service promises and expectations proliferate in the marketplace. The Commission should take action now, so that VON services are required to contribute their fair share as soon as possible.

⁵² Comments of Netscape Communications, CC Docket No. 96-45, filed April 12, 1996, at 18.

V. CONCLUSION

The Commission should act in accordance with the recommendations proposed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. R. Sloan', written over a horizontal line.

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CERTIFICATE OF SERVICE

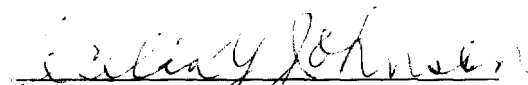
I, Cecelia Y. Johnson, hereby certify that I have this 8th day of May, 1996, sent a copy of the foregoing "Comments of LDDS WorldCom" by hand delivery to the following:

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